

PATRICK E. STOCKALPER, SBN 156954
MOLSHREE GUPTA, SBN 275101
KJAR, MCKENNA & STOCKALPER, LLP
841 Apollo Street, Suite 100
El Segundo, California 90245
Telephone (424) 217-3026
Facsimile (424) 367-0400
pstockalper@kmslegal.com
mgupta@kmslegal.com

Attorneys for Defendant,
SERGEANT TRAVIS KELLY
(Defendants is exempt from filing fees pursuant to Government Code § 6103)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA ASSIFF,

Plaintiffs,

v.

COUNTY OF LOS ANGELES;
SHERIFF DEPUTY BADGE
NUMBER 404532; And DOES 1
through 10,

Defendants.

Case No.: 2:22-cv-05367 RGK(MAAx)

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
OF DEFENDANT’S MOTION IN
LIMINE NO. 4**

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to:
Hon. R. Gary Klausner, District Judge
Courtroom 850

All Discovery Matters Referred to:
Hon. Maria A. Audero, District Judge

Defendant, SERGEANT TRAVIS KELLY (hereinafter “Defendant”) hereby respectfully submits the following reply memorandum of points and authorities in support of his motion in limine to limit evidence, references, argument and testimony from Plaintiff’s police practices expert, Jeffrey Nobel.

1 **I. INTRODUCTION**

2 The Court’s tentative ruling on Plaintiff’s motion in limine #2 (expert testimony)
3 and Defendant’s motion in limine #4 (expert testimony), the Court held that no expert
4 from either side may testify as to conclusions of law or the ultimate facts to be
5 determined by the jury. However, the Court noted that experts may testify as to
6 hypotheticals; in addition, the Court stated that experts may testify as to whether
7 purported conduct complied with industry standards (such as POST). Finally, the Court
8 commented that, if Defendant maintains his qualified immunity defense at Trial, the
9 experts may testify as to the constitutionality of the purported conduct, for the limited
10 purpose of qualified immunity.

11 However, Plaintiff’s expert, Jeffrey J Noble’s opines on conclusions of law or the
12 ultimate facts, follows:

- 13 a) “Sergeant Kelly unnecessarily escalated the contact with Mr. Assiff
14 creating the need to use force that would have likely not have been
15 otherwise necessary.” (See Expert report of Jeffrey J. Noble, included as
16 **Exhibit B** to Declaration of Molshree Gupta in Support of Defendants’
17 MIL No. 4, at p. 15, 33.)
- 18 b) “Sergeant Kelly failed to take basic reasonable steps to de-escalate the
19 situation before telling Mr. Assiff that he would be arrested and using
20 force to gain compliance.” (See Expert report of Jeffrey J. Noble, included
21 as **Exhibit B** to Declaration of Molshree Gupta in Support of Defendants’
22 MIL No. 4, at p. 36.)
- 23 c) “Had Sergeant Kelly followed generally accepted police practices and his
24 department policy and used de-escalation to gain voluntary compliance, it
25 is likely that no force would have been necessary.” (See Expert report of
26 Jeffrey J. Noble, included as **Exhibit B** to Declaration of Molshree Gupta
27 in Support of Defendants’ MIL No. 4, at p. 15, 37.)
- 28 d) “Sergeant Kelly’s Use of Pepper Spray on Mr. Assiff was Objectively

1 Unreasonable, Excessive ...” (See Expert report of Jeffrey J. Noble,
2 included as **Exhibit B** to Declaration of Molshree Gupta in Support of
3 Defendants’ MIL No. 4, at p. 15.)

4 e) “While Mr. Assif was not complying with Sergeant Kelly’s commands he
5 was not actively resisting, but merely passively resisting.” (See Expert
6 report of Jeffrey J. Noble, included as **Exhibit B** to Declaration of
7 Molshree Gupta in Support of Defendants’ MIL No. 4, at p. 18, 44.)


8 f) “The use of a punch to the face in these circumstances was excessive,
9 objective unreasonable” (See Expert report of Jeffrey J. Noble,
10 included as **Exhibit B** to Declaration of Molshree Gupta in Support of
11 Defendants’ MIL No. 4, at p. 19, 46(c).)

12 Such expert testimony by Plaintiff’s expert should be excluded.
13

14
15 Dated: July 14, 2023

KJAR, MCKENNA & STOCKALPER, LLP

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18 By:



PATRICK E. STOCKALPER
MOLSHREE GUPTA
Attorneys for Defendants,
COUNTY OF LOS ANGELES and SERGEANT
TRAVIS KELLY
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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 841 Apollo Street, Suite 100, El Segundo, California 90245.

On July 14, 2023, I served the foregoing document described as **REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION IN LIMINE NO. 4** on all interested parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

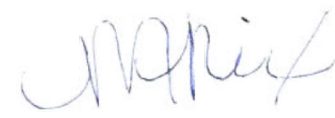
By Mail I caused such envelope(s) to be deposited in the mail at El Segundo, California. The envelope was mailed with postage thereon fully prepaid and addressed to the parties listed on the Service List. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

XX **By Email** Based upon a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed in the Service List. My email address is mnixon@kmslegal.com.

By Personal Service I caused such document to be Personally Served on the parties listed in the Service List.

XX **State** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 14, 2023, at El Segundo, California.



Maria Nixon

SERVICE LIST

Assiff, Joshua vs. County of Los Angeles, et al.

Central District- Case No.: 2:22-cv-05367 RGK(MAAX)

Thomas M. Ferlauto, Esq. Law Office of Thomas M. Ferlauto, APC 25201 Paseo de Alicia, Ste. 270 Laguna Hills, CA 92653 EM: tmf@lawofficetmf.com	Attorney for Plaintiff, JOSHUA ASSIFF
Philip Cohen, Esq. Law Offices of Philip Kent Cohen, APC 100 Wilshire Boulevard, Suite 1300 Santa Monica, CA 90401 Telephone: 310/451-9111 Facsimile: 310/451-9119 EM: pcohen@pcohenlaw.com	Co-Attorney for Plaintiff. JOSHUA ASSIFF